

Appl. No. : 09/845,849
Filed : April 30, 2001

REMARKS

Claims 1, 6, 8-21, 23, 24, 35-39 are pending. Claims 2-5, 7, 22, and 25-34 are canceled. Claims 1, 6, 17-20, 35, and 36 have been amended. Applicants respectfully submit that the amendments made herein do not add any new matter. Applicants thank the Examiner for the indicated allowability of Claims 6, 18, 20 and 36. Reconsideration of the present case is respectfully requested.

Specification Objections

The specification stands objected to for failing to comply with the sequence rules of 37 CFR §§1.821-1.825. The specification has been amended to correct this typographical error and to identify the amino acid sequence provided in Figure 2, and discussed on page 6, beginning on line 11. The specification has also been amended to identify the sequence identification numbers provided in the brief description of Figure 3 (page 6) and on page 41, line 18.

Applicants also submit herewith an updated copy of the Sequence Listing which accurately reflects the sequences provided in Figure 3A, as originally filed in the present application. These amendments were made merely to update the sequence listing to reflect the sequences that were originally filed with the application and, as such, do not add new matter to the pending application. For the above-stated reasons, Applicants respectfully request the withdrawal of these objections.

35 U.S.C. §112, first paragraph, Written Description

Claims 1, 8-17, 19, 21, 23, and 24 stand rejected for allegedly failing to comply with the written description requirement. Applicants respectfully traverse.

To satisfy the written description requirement, a patent application must describe the invention in sufficient detail that one of skill in the relevant art could conclude that the inventor was in possession of the claimed invention at the time the application was filed. *See Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64, (Fed. Cir. 1991). In view of the recent decision by the Federal Circuit, *Union Oil of California*, it is clear that an Applicant need not precisely recite each and every element of a claim limitation in the specification in order to satisfy the written

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description requirement. *See Union Oil of Cal. v. Atlantic Richfield Co.*, 208 F.3d 989 (Fed. Cir. 2000).

Applicants' invention relates to the discovery that introduction of antisense molecules against the FT gene in a plant leads to a phenotype of delayed flower development. The specification contains actual experimental evidence to illustrate this discovery in Example 3, beginning on page 41 of the specification. Throughout the specification, including page 30, under the heading "ANTISENSE POLYNUCLEOTIDES", Applicants describe several methods for inhibiting the production of a gene using antisense technology. Accordingly, Applicants have fully described genetically modified plants having an exogenous anti-FT gene nucleotide sequence in their genome and a delayed flowering phenotype, and methods of producing these plants. For these reasons, one of ordinary skill in the art would believe that Applicants were in possession of such plants.

However, solely to advance prosecution, independent Claims 1, 17, 19, and 37 have been amended to recite that the antisense sequence has at least 95% sequence identity to SEQ ID NO:3. Written description support for this amendment can be found in Example 3, pages 41-43. The Examiner indicated in the June 20, 2003 Office Action that this subject matter would be allowable. Accordingly, Applicants respectfully request the withdrawal of these rejections and allowance of these claims.

35 U.S.C. §112, first paragraph, Enablement

Claims 1, 8-17, 19, 21, 23, 24, 35, and 37-39 stand rejected under 35 U.S.C. §112, first paragraph, for allegedly failing to comply with the enablement requirement. Applicants respectfully traverse.

"To be enabling, the specification of a patent must teach those skilled in the art to make and use the full scope of the claimed invention without 'undue experimentation' ... Nothing more than objective enablement is required, and therefore it is irrelevant whether this teaching is provided through broad terminology or illustrative examples." *See In re Wright*, 999 F.2d 1557 (Fed. Cir. 1993).

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One of ordinary skill in the art would not be required to engage in undue experimentation to make transgenic plants having delayed flowering and comprising an antisense molecule that interferes with FT gene expression. Applicants teach how to make and use antisense molecules that inhibit the FT gene to produce plants with delayed flowering times in Example 3. From this, and other teachings provided in the specification (*e.g.*, page 30-32), one of ordinary skill in the art could find other antisense molecules that interfere with similar FT encoding genes, and thereafter test those antisense molecules to determine their affect on transgenic plants. Since the level of experimentation required of a skilled artisan to make and use the full scope of the claimed invention is not undue, Applicants submit that the claims are fully enabled by the specification as filed.

However, solely to advance prosecution, independent Claims 1, 17, 19, and 37 have been amended to recite that the antisense sequence has at least 95% sequence identity to SEQ ID NO:3. Example 3, on pages 41-43, provides enablement for creating genetically modified plants having an antisense sequence with at least 95% identity to SEQ ID NO:3. In the pending office action, the Examiner indicated that this subject matter is allowable. Accordingly, Applicants respectfully request the withdrawal of this rejection and allowance of the pending claims.

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CONCLUSION

Applicants have endeavored to address all issues raised in the Official Action. If the Examiner finds any remaining impediment to the prompt allowance of these claims that could be clarified with a telephone conference, the Examiner is respectfully requested to initiate the same with the undersigned.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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